

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEPHEN P. KORN
Petitioner

Vrs.

NANCY BANKS, IN HER OFFICIAL CAPACITY
AS CLERK FOR THE CITY OF SOUTHFIELD
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

- 1) Whether Michigan's Court of Appeals decision affirming the Trial Court's dismissal of the instant action on Motion of Summary Disposition violates the 14th Amendment to the United States Constitution, contrary to Brown v. Board of Education, in applying Michigan's Election Law and Freedom of Information Law differently in the cases of two Michigan Clerks; ie. an African American Male Clerk, and a White American Female Clerk?

- A. When the African American Male Clerk refused to produce "public election records", the African American Male was charged, tried, convicted, and sent to jail for failing to produce such records. All records were ultimately produced.

When the White American Female Clerk refused to produce "public election records", the White American Female was given a pass from prosecution and incarceration; No records were ordered produced, and the case requesting such information was dismissed on Motion for Summary Disposition. This Clerk answered no questions and produced no records.

- B. When the African American Male Clerk was thought to have "obstructed justice" in the election records case, the African American Male was charged, tried, convicted, and sent to jail for obstruction of justice.

When the White American Female Clerk allegedly reported to the State's Bureau of Elections that she had destroyed the very absentee ballots which were under injunctive order in this very litigation, the White Female Clerk avoided civil and criminal exposure as the Trial Court granted Summary Disposition to this Clerk, affirmed by Michigan's Court of Appeals. Although the White American Female Clerk may well have obstructed justice in the case at bar, the Trial Court and the Michigan Appellate Court failed to permit the slightest time for an evidentiary hearing.

C. When the Michigan Appellate Court chose to "set an example" of an African American Male Clerk for: a) failing to turn over public election records; and b) obstruction of justice; the rationale adopted by Michigan's Court of Appeals in *People v. Willie Jenkins*, was certain and firm.

When the Trial Court and Michigan's Appellate Courts chose "not to set an example" of a White American Female Clerk for: a) failing to turn over public election records; and b) obstruction of justice; the rationale adopted by Michigan's Court of Appeals in *People v. Willie Jenkins*, was ignored.

INTRODUCTORY STATEMENT

This appeal is taken from a Judgment of the Michigan Court of Appeals dated July 27, 2004 affirming a Trial Court Dismissal of a Freedom of Information/Election Law action prior to Trial of October 3, 2003. The Judgment of the Michigan Court of Appeals in the case at bar involving a White American female Clerk from Oakland County, is at odds with the Judgment of the Michigan Court of Appeals from a different panel of the Court, involving Mr. Willie Jenkins, an African American male Clerk from the Township of Buena Vista, as addressed in *People v. Jenkins*, 244 MA 1, 624 NW2d 457 (2000). Mr. Jenkins, an African American male clerk was charged with violation of Michigan's Election Law and obstruction of justice in failing to turn over requested election records. Mr. Jenkins was required to stand trial, answer questions under oath, and was compelled to turn all election materials over for public scrutiny, (including the unopened, uncounted absentee ballots). Mr. Jenkins was charged, convicted, and later sentenced to jail for ten years, serving eighteen months of the sentence incarcerated.

The Defendant in the case at bar, is a White American female clerk who refused to turn over election records, as well. She admitted to destroying some of the election materials during the lower Court proceedings, and is suspected of destroying the very election ballots, (the unopened, uncounted absentee ballots, as reported by Mr. Brad Wittman of the Michigan Department of Elections) which are an important part of the "public information",

sought to be produced in the instant case. Notwithstanding the foregoing, the Defendant was not required to stand trial; was not required to answer one question under oath; and was not required to turn over any election materials for public scrutiny. This White American female clerk was not charged with any violation of the Election law, nor was she sentenced to incarceration, as was Mr. Jenkins.

Although the Jenkins case, supra, was cited in Appellant's Trial Court pleadings, and again in Appellant's pleadings in the Court of Appeals, both Courts were silent as to the justification for the different treatment afforded the different clerks, of different races, of different sexes, from different counties. Both clerks refused to turn over public information involving Election records. The African American male clerk went to jail and produced everything, (published decision). The White American female clerk opposed Trial successfully and produced nothing, (unpublished decision).

Plaintiff/Appellant has been denied a Trial according to law; and even the slightest evidentiary hearing to determine if the information sought in this Election Law/ Freedom of Information Law case even exists. The report of the destruction of the subject absentee ballots came from an official of Michigan's Department of Elections, and such destruction would have been contemptuous at best, and obstruction of justice, perhaps, in the face of an injunction prohibiting such destruction.

Public information should be made available without regard to whether a clerk is male or female, African American or White. The Trial Court and the Michigan Appellate Courts failed to address the disparate treatment afforded the African American male clerk, and the White Female clerk in the instant case.

Michigan's Freedom of Information Law and Michigan's Election Law would allow the public access to information behind the scenes of its government and government officials. This was intended to make government process accessible to the public it serves. The case at bar demonstrates what can happen when the "Goliath" of government is permitted to hide behind its strength of public tax dollars to burden any "David" who would dare to request that public information be made public. Michigan statute calls for an "expedited" trial, not for years and years of "pre-trial motions", briefs and discovery. At the end of this day, the Trial Court's dismissal precluded any public information to be forthcoming regarding a particular election in 1999. There was never a

Trial, nor the slightest evidentiary hearing to determine if the White American Female clerk had honored the Trial Court's injunction not to destroy some of the materials requested, as was reported by an official of the Michigan Department of Elections.

Michigan's Freedom of Information Law and Michigan's Election Law are not applied fairly and consistently in the State of Michigan, as reflected in the instant case. There is clearly disparate treatment afforded an African American male clerk from one county, and a White American female clerk from another county. The Trial Court and the Appellate Courts are silent as to any rationale for this disparate treatment:

- A. The African American male clerk is charged, tried - convicted, and incarcerated for failing to turn over election records, and in the end, all requested election records are produced, (including the unopened counted absentee election ballots from a prior election).
- B. The White American female clerk, never stands Trial; never answers one question under oath; and is compelled to produce no election records, (including the unopened, uncourtred absentee election ballots from a prior election).

This does not pass the test of fundamental fairness to understand that Mr. Willie Jenkins went to jail and had to produce all election records, under the same laws that were applied differently to this Clerk who never stood Trial, and produced no records. Where is the justice? Where is the due process? Where is the equal protection under the law?

Since 2000, the talk of Election Reform has reached all fifty states. Michigan's Election Law and Michigan's Freedom of Information Law would permit such a review. In the case of Mr. Jenkins, all materials were forthcoming. In the instant case, there was no Trial after twenty three months. There was no Evidentiary Hearing after twenty three months. There were no records produced in twenty three months. The scales of justice should balance based on fair and equal justice under the law. The weight of the scales should not appear to favor one racial group over another; one ethnic group over another; one sex over another; one age group over another.

On this record, Petition for Certiorari is sought.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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CITATIONS OF OPINIONS AND ORDERS

Order of the Michigan Supreme Court dated July 8, 2005
No cite available

Order of the Michigan Supreme Court dated February 28, 2005
427 Mich 867, 2005

Order of the Michigan Court of Appeals dated July 27, 2004
Unpublished opinion

STATEMENT OF JURISDICTION

On July 8, 2005, the Supreme Court of Michigan, the state's highest state court, issued the opinion which gives rise to this appeal. The jurisdiction of this Court is invoked under 28 USC sec 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES

14th AMENDMENT TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MCLA sec. 15.240 sec. 10(5)

"An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way."

**MCLA sec. 168.93i Prohibited conduct; violation as
misdemeanor;
"valuable consideration" defined.**

Sec. 931.

(1) A person who violates 1 or more of the following subdivisions is guilty of a misdemeanor:

(a) A person shall not, either directly or indirectly, give, lend, or promise valuable consideration, to or for any person, as an inducement to influence the manner of voting by a person relative to a candidate or ballot question, or as a reward for refraining from voting.

(b) A person shall not, either before, on, or after an election, for the person's own benefit or on behalf of any other person, receive, agree, or contract for valuable consideration for 1 or more of the following:

(i) Voting or agreeing to vote, or inducing or attempting to induce another to vote, at an election.

(ii) Refraining or agreeing to refrain, or inducing or attempting to induce another to refrain, from voting at an election.

(iii) Doing anything prohibited by this act.

(iv) Both distributing absent voter ballot applications to voters and receiving signed applications from voters for delivery to the appropriate clerk or assistant of the clerk. This subparagraph does not apply to an authorized election official.

(c) A person shall not solicit any valuable consideration from a candidate for nomination for, or election to, an office described in this act. This subdivision does not apply to requests for contributions of money by or to an authorized representative of the political party committee of the organization to which the candidate belongs. This subdivision does not apply to a regular business transaction between a candidate and any other person that is not intended for, or connected with, the securing of votes or the influencing of voters in connection with the nomination or election.

(d) A person shall not, either directly or indirectly, discharge or threaten to discharge an employee of the person for the purpose of influencing the employee's vote at an election.

(e) A priest, pastor, curate, or other officer of a religious society shall not for the purpose of influencing a voter at an election, impose or threaten to impose upon the voter a penalty of

excommunication, dismissal, or expulsion, or command or advise the voter, under pain of religious disapproval.

(f) A person shall not hire a motor vehicle or other conveyance or cause the same to be done, for conveying voters, other than voters physically unable to walk, to an election.

(g) In a city, township, village, or school district that has a board of election commissioners authorized to appoint inspectors of election, an inspector of election, a clerk, or other election official who accepts an appointment as an inspector of election shall not fail to report at the polling place designated on election morning at the time specified by the board of election commissioners, unless excused as provided in this subdivision. A person who violates this subdivision is guilty of a misdemeanor, punishable by a fine of not more than \$10.00 or imprisonment for not more than 10 days, or both.

An inspector of election, clerk, or other election official who accepts an appointment as an inspector of election is excused for failing to report at the polling place on election day and is not subject to a fine or imprisonment under this subdivision if 1 or more of the following requirements are met:

(i) The inspector of election, clerk, or other election official notifies the board of election commissioners or other officers in charge of elections of his or her inability to serve at the time and place specified, 3 days or more before the election.

(ii) The inspector of election, clerk, or other election official is excused from duty by the board of election commissioners or other officers in charge of elections for cause shown.

(h) A person shall not willfully fail to perform a duty imposed upon that person by this act, or disobey a lawful instruction or order of the secretary of state as chief state election officer or of a board of county election commissioners, board of city election commissioners, or board of inspectors of election.

(i) A delegate or member of a convention shall not solicit a candidate for nomination before the convention for money, reward, position, place, preferment, or other valuable consideration in return for support by the delegate or member in the convention. A candidate or other person shall not promise or give to a delegate money, reward, position, place, preferment, or other valuable consideration in return for support by or